

EXHIBIT L

Videotaped Deposition of
David Garfinkle

July 31, 2020

Volume I

Grae

vs.

Corrections Corporation of America, et al.

Confidential



1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF TENNESSEE

3 Civil Action No. 3:16-CV-02267

4 NIKKI BOLLINGER GRAE, Individually and on
5 Behalf of All Others Similarly Situated,

6 Plaintiff,
vs.

7 CORRECTIONS CORPORATION OF AMERICA, et al.,

8 Defendants.

9 _____/

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12 *** CONFIDENTIAL ***

13 VIDEOTAPED/ZOOM DEPOSITION OF

14 DAVID GARFINKLE

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17 Volume I

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20 Friday, July 31, 2020
9:38 a.m. - 6:27 p.m.

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23 Franklin, Tennessee

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Stenographically Reported By:
Debra Duran-Bornstein, CCR, RPR, LCR
Aptus Court Reporting
Job No. 10071104

1 The following proceedings began at 9:38 a.m.:

2 THE VIDEOGRAPHER: We are now on the
3 record. Today's date is July 31, 2020, and the time
4 is 9:38 a.m.

5 This is the video deposition of David M.
6 Garfinkle, being taken in the Matter of Nikki
7 Bollinger Grae versus Corrections Corporation of
8 America, et al.

9 We are taking this deposition via Zoom,
10 and my name is Spencer Beneveniste of Aptus Court
11 Reporting.

12 Will counsel please identify yourselves
13 and state who you represent.

14 MS. RADCLIFFE: Willow Radcliffe, of
15 Robbins Geller, for the Plaintiff and the Class.

16 MR. WOOD: Christopher Wood, Robbins
17 Geller, on behalf of Plaintiff and the Class.

18 MR. LYONS: Christopher Lyons, from
19 Robbins Geller, on behalf of the Plaintiff and the
20 Class.

21 MR. BLACK: Kenneth Black, Robbins
22 Geller, on behalf of the Plaintiff and the Class.

23 MR. GLENNON: Brian Glennon, Latham &
24 Watkins, on behalf of Defendants and, of course, the
25 witness.

1 MR. McGEE: Trey McGee, Riley, Warnock &
2 Jacobson, on behalf of the witness and the
3 Defendants.

6 MR. RILEY: Correct. Thank you.

7 MR. WHITWORTH: And Morgan Whitworth, of
8 Latham & Watkins, on behalf of the Defendants and the
9 witness.

10 THE VIDEOGRAPHER: The court reporter
11 today is Debra Duran, and she may now swear in or
12 affirm the Deponent.

13 THE STENOGRAPHER: Please raise your
14 right hand.

15 Do you swear that the testimony you are
16 about to give in this case will be the truth, the
17 whole truth, and nothing but the truth?

18 | THE WITNESS: Yes, I do.

19 Thereupon:

20 DAVID GARFINKLE

21 having been first duly sworn remotely was examined
22 and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. RADCLIFFE:

25 Q. Good morning, Mr. Garfinkle.

1 Q. Okay. And he was the CFO at the time?

2 A. That's right.

3 Q. Okay. You indicated that you prepared the
4 company's public filings, the 10Qs and 10Ks.

5 Were you the -- the initial drafter of those
6 documents during that time?

7 A. Yes. I think that's a fair description.

8 Obviously, the 10Ks are a much larger
9 document, so we involved many subject matter experts
10 in the initial drafting of the document. 10Qs are
11 much shorter, so I -- I typically, as controller,
12 would meet with certain representatives, including the
13 chief financial officer, to talk about what we want to
14 disclose, developments during the quarter that need to
15 be disclosed, and then draft it, we'd submit it out to
16 various parties for review.

17 Q. Okay. And when you say you would submit it to
18 various parties for review, who would that include?

19 A. It would include our outside independent
20 accountants; it would include our disclosure
21 committee; it would include our outside attorneys; it
22 would include all the members of the disclosure
23 committee, which is probably 20 to 25 people of -- of
24 who represent various departments within the company
25 and subsidiaries.

1 So, a lot of people, an extensive review
2 process.

3 Q. Okay. So the -- the types of individuals that
4 you just listed would receive copies of the initial
5 drafts of the 100s and 10Ks; is that fair to say?

6 A. Yes.

7 MR. GLENNON: Objection, foundation and
8 vague.

9 BY MS. RADCLIFFE:

10 Q. Okay. When -- would you explain the next step
11 in the process after various committees? For example,
12 the disclosure committee members, as well as the
13 accountants and outside attorneys, once they got the
14 drafts of the 10Qs and 10Ks, how, then, would a formal
15 document come to fruition?

16 MR. GLENNON: Objection.

17 A. Back then, most of it was -- you know, the
18 various reviewers would, like I say, come in various
19 forms. The -- the disclosure committee typically
20 would call and -- are you talking about the time when
21 I was the controller?

22 BY MS. RADCLIFFE:

23 8. **Correct.**

24 A. Yes. So when I was the controller, many of
25 the members of the disclosure committee, particularly

1 if they knew they weren't going to be able to attend
2 the -- the meeting -- and we have 20, 25 people, so
3 it's difficult to line up everybody to attend those
4 couple of hours that we reviewed the document -- they
5 would provide me with comment, either via telephone,
6 they would mark up copies, send it to me.

7 The same for the accountants, they typically
8 would mark up copies and ask questions, point to
9 certain disclosure items and, you know, make sure we
10 were accurate on them. They would -- the accountants
11 would tick and tie the numbers, so if they found a
12 number that was an error, they would circle it or
13 provide some kind of communication to me that they --
14 they didn't necessarily agree with the number, so we
15 had to double-check the number.

16 Then in the disclosure committee meeting,
17 again, a lot of times I will have had conversations
18 with various members, if they provide me with comment,
19 but in that meeting -- and it's much like it is today,
20 we, you know, page turn the document; we'll flip page
21 by page, we highlight certain new or sensitive areas
22 that were not necessarily in the previous document. A
23 lot of our public filings, as with any public company,
24 a lot of disclosures are repetitive from quarter to
25 quarter so we typically highlight those changes from

1 quarter to quarter, so that we can get a good set of
2 eyes on them and make sure everybody is comfortable
3 with what we're disclosing.

4 So we -- after the page turn, we -- we go
5 around the room, generally speaking, and ask if
6 everybody has had adequate time to review the
7 document. They would offer comments to make sure --
8 we would ask -- we've got a checklist of things
9 that -- to make sure that if there was anything not in
10 the document that needed disclosure, we'd have
11 discussions around those things. We would discuss
12 issues of materiality and things like that.

13 **Q. And during the time you were the controller,**
14 **who had final authority regarding the issuance of**
15 **those Qs and Ks?**

16 A. That would be the --

17 MR. GLENNON: Object to form.

18 THE WITNESS: I'm sorry.

19 MR. GLENNON: Go ahead.

20 A. The chief financial officer and the CEO.

21 BY MS. RADCLIFFE:

22 **Q. And was there ever an instance where the chief**
23 **financial officer and the CEO did not agree on a final**
24 **filing for the SEC?**

25 MR. GLENNON: Same objection.

1 A. No.

2 BY MS. RADCLIFFE:

3 Q. And after you became -- well, let's just say
4 after 2014, you became the CFO of CCA; is that
5 correct?

6 A. Yes.

7 Q. And that was in approximately May of 2014?

8 A. Exactly. May of 2014.

9 Q. Okay. Did the process change in terms of
10 finalizing the 10Qs and the 10Ks for filing with the
11 SEC?

12 A. My responsibility obviously changed, but the
13 process didn't change.

14 Q. And how did your responsibilities change?

15 A. Well, I converted from a person who was, more
16 or less, the primary draftsperson to somebody who
17 would review the drafts.

18 Again, I would be involved in the
19 conversations. So we have a managing director of
20 finance who primarily drafts it today, so I guess that
21 part I guess may have changed a little bit. So I meet
22 with the current controller, with the Managing
23 Director of Finance currently, and we kind of go over
24 what -- what we think needs to be disclosed in the
25 current quarter.

1 activities.

2 Q. And in your experience as CFO, have you ever
3 hesitated to sign a Form 10K?

4 MR. GLENNON: Object to form.

5 A. No. I mean, it's a very exhaustive process,
6 and we described the disclosure committee process,
7 which is the -- kind of the -- near the end of the
8 process, and that's the formal meeting that we have to
9 discuss the disclosures, so -- just to correct the
10 record or elaborate on the record there.

11 You know, my everyday business activities are
12 informative as to what we need to disclose for the
13 quarter, but it is that disclosure committee meeting
14 at the end where we kind of rehash and conclude that
15 we've captured everything for the quarter.

16 BY MS. RADCLIFFE:

17 Q. And who leads the disclosure committee
18 meetings?

19 A. The vice president of finance, Brian Hammonds,
20 normally leads the discussion of the review of the
21 10Q. There's also a government section led by our
22 internal general counsel who has prepared the
23 checklist that we review at every disclosure committee
24 meeting.

25 But I would say the meeting is more or less

1 led by the vice president of finance who is reviewing
2 the documents.

3 Q. **And do you rely on that checklist in**
4 **assessing --**

5 MR. GLENNON: Form.

6 BY MS. RADCLIFFE:

7 Q. **-- whether or not you should sign off on the**
8 **filing of a Form 10K?**

9 MR. GLENNON: Objection, form.

10 Foundation.

11 A. I rely on many things in signing the
12 certifications. The checklist is just one component
13 of the review process.

14 BY MS. RADCLIFFE:

15 Q. **And is it one component of the review process**
16 **that you rely on?**

17 MR. GLENNON: Same objections.

18 A. It is, but I wouldn't say it's -- you know,
19 it's -- if we didn't go through that checklist -- it's
20 not the only thing that we rely on, I guess, is what
21 I'm saying.

22 BY MS. RADCLIFFE:

23 Q. **So just to rephrase the question, the**
24 **checklist is one component of the review process, not**
25 **the only component, but one component; is that fair to**

1 say?

MR. GLENNON: Object to form.

3 A. That's correct.

4 BY MS. RADCLIFFE:

5 Q. Okay.

6 A. Yes.

7 Q. And it's one component that you rely on, this
8 checklist?

9 MR. GLENNON: Object to form.

10 A. Yes.

11 BY MS. RADCLIFFE:

12 Q. Go ahead and pull up Tab 5, please.

13 A. Okay.

14 MS. RADCLIFFE: Tab 5, we will mark as
15 Exhibit 503.

16 (Thereupon, marked as Plaintiff
17 Exhibit 503.)

18 BY MS. RADCLIFFE:

19 Q. Do you recognize this document Mr. Garfinkle?

20 MR. GLENNON: Willow, can you give us two
21 minutes? We're having -- there's a little bit of a
22 delay.

23 | Okay, we got it. Thank you.

24 A. I do.

1 between publicly disclosing something and closing the
2 window. So just because we may have information that
3 is not public does not create a disclosure obligation.
4 We have nonpublic information routinely within our
5 business, but that doesn't mean we're required to
6 disclose that information.

7 BY MS. RADCLIFFE:

8 Q. **And here, in this sentence, it's referring to**
9 **"After discussions with Latham, we concluded that the**
10 **disclosure of the specifics about the cure notice**
11 **weren't required."**

12 **So the sentence is referring to the**
13 **disclosures --**

14 A. Right.

15 Q. **-- correct?**

16 **And my question is: Did you or anyone at CCA,**
17 **to your knowledge, rely on those discussions with**
18 **Latham in determining whether or not to disclose the**
19 **specifics about the cure notice?**

20 MR. GLENNON: Objection to form.

21 And also advise the witness not to
22 disclose anything that's protected by the
23 attorney-client privilege.

24 A. So I can't disclose what was discussed with
25 the attorneys. I'm not sure I can answer the

1 question.

2 BY MS. RADCLIFFE:

3 Q. **So my question --**

4 MR. GLENNON: Willow, let's -- let's take
5 a quick break. We don't need much time.

6 MS. RADCLIFFE: Let me just ask him a
7 follow-up question, and then you can have your break,
8 okay?

9 MR. GLENNON: Sure.

10 I'm not going let him wander too much on
11 this particular issue until we can talk on the
12 privilege point.

13 BY MS. RADCLIFFE:

14 Q. **The next sentence says, "We did, however, add
15 disclosures in our risk factors about the potential
16 for contract terminations resulting from contract
17 compliance."**

18 A. Yes, I see that.

19 Q. **Okay. Now, if you can go back to what was
20 tabbed -- it's -- I believe it's Exhibit 3.**

21 A. Three? That's the exhibit. Do you know what
22 tab number?

23 Q. **Tab 3. Sorry.**

24 **Tab 3. It's previously marked as
25 Hininger 364.**

1 witness not to answer to the extent it's going to
2 reveal privileged communication. And the form of the
3 question.

4 BY MS. RADCLIFFE:

5 Q. You can answer.

6 A. So I can answer?

7 Q. As long as you don't tell me anything that is
8 privileged.

9 A. I'm not sure I can -- I could point to
10 anything specific. Maybe you need to repeat the
11 question for me.

12 Q. I'll ask you. For example, did you rely on
13 in-house and outside counsel with respect to your
14 representations in CCA's public filing of 10Ks and Qs
15 that you signed regarding the high standards of CCA's
16 operations?

17 MR. GLENNON: Same objection.

18 But you can answer, Mr. Garfinkle.

19 A. Well, you know, when it comes to outside
20 counsel, outside counsel does not have the expertise
21 that our company has. You know, I think -- so, you
22 know, I wouldn't have relied on outside counsel in
23 assessing, you know, specific high quality statements
24 to secure facilities.

25 MR. GLENNON: Hold on, Willow. Please

1

REPORTER CERTIFICATE

2

STATE OF TENNESSEE

3

COUNTY OF WILLIAMSON

4

I, the undersigned, a Licensed Court Reporter
of the State of Tennessee, do hereby certify:

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That the foregoing proceedings were taken
before me at the time and place herein set forth; that
any witnesses in the foregoing proceedings, prior to
testifying, were duly sworn; that a record of the
proceedings was made by me using machine shorthand,
which was thereafter transcribed under my direction;
that the foregoing transcript is a true record of the
testimony given.

14

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17

Further, that if the foregoing pertains to
the original transcript of a deposition in a federal
case, before completion of the proceedings, review of
the transcript [X] was [] was not requested.

18

19

20

I further certify that I am neither
financially interested in the action nor a relative or
employee of any attorney or party to this action.

21

22

IN WITNESS WHEREOF, I have this date
subscribed my name.

23

Dated: August 3, 2020

24

25



Debra Duran-Bornstein
RPR, CCR, LCR No. 808